

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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| |) | Chapter 11 |
| |) | |
| In re: |) | Case No. 01-01139 (JKF) |
| |) | (Jointly Administered) |
| W.R. GRACE & CO., <u>et al.</u> ¹ |) | |
| |) | Rel. to Docket No. 21747 |
| Debtors. |) | |
| |) | |
| |) | |

**STATEMENT OF ISSUES TO BE PRESENTED ON APPEAL AND
DESIGNATION OF ITEMS FOR RECORD ON APPEAL**

Appellants the Official Committee of Unsecured Creditors of W.R. Grace & Co., et al. (the “Creditors’ Committee”), hereby sets forth pursuant to Fed. R. Bank. Pro. 8006 the following issues to be decided on its appeal from the Memorandum Opinion and accompanying Order Sustaining Debtors’ Objection To Unsecured Claims Insofar As Claims Include

¹ The Debtors consist of the following 62 entities: W.R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W.R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food ‘N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W.R. Grace Capital Corporation, W.R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (F/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., B&C Liquidating Corp., Emerson & Cumming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

Postpetition Interest At The Contract Default Rate, both dated May 19, 2009 (D.I. 21474), and respectfully states as follows:

1. Whether the Court erred in finding that the Court had been provided with no evidence to substantiate the Debtors' post-petition default under the Pre-petition Credit Facilities².
2. Whether the Court erred in finding that the default interest provisions under the Pre-petition Credit Facilities were ipso facto provisions and not enforceable.
3. Whether the Court erred in ignoring Third Circuit precedent and other authority holding that a public company's market capitalization is strong evidence of a debtor's solvency.
4. Whether the Court erred in ignoring the provisions of the Plan and Disclosure Statement that evidence the Plan Proponents' presumption of the Debtors' solvency.
5. Whether the Court erred in holding that the holders of General Unsecured Claims arising from the Debtors' Pre-petition Credit Facilities cannot receive post-petition interest at their contractual default rates.
6. Whether the Court erred in finding that the Committee's prior agreement with the Debtors to pay post-petition interest to holders of General Unsecured Claims arising under the Pre-petition Credit Facilities in connection with the Committee's support for a now defunct, superseded and replaced plan of reorganization binds each of the individual holders of such claims.

² Capitalized terms not otherwise defined shall have the meaning ascribed to them in the Debtor's First Amended Plan of Reorganization, dated February 27, 2009 (D.I. 20872).

Appellant Creditors' Committee hereby designates pursuant to Fed. R. Bank. Pro. 8006 the following items for inclusion in the Record on Appeal:

1. Debtors' Objection to the Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 18922)
2. Transcript of Hearing held on June 23, 2008 (D.I. 19036)
3. The Official Committee of Equity Holders' Joinder to Debtors' Objection to the Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19051)
4. Response of the Creditors Committee to Debtors' Objection to the Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19072)
5. Response of the Bank Lender Group in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19073)
6. JPMorgan Chase Bank N.A.'s Joinder in Response of the Bank Lender Group in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated May 14, 1998 and May 5, 1999 (D.I. 19074)
7. Transcript of Hearing held on July 21, 2008 (D.I. 19210)
8. Declaration of Edwin N. Ordway, Jr. in Support of Response of the Creditors Committee to Debtors' Objection to Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19321)
9. Affidavit of Charles O. Freedgood of JPMorgan Chase Bank, N.A., in Support of Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19322)
10. Declaration of Robert M. Tarola in Support of Debtors' Objection to Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19323)
11. Declaration of Mark A. Shelnitz in Support of Debtors' Objection to Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19324)
12. Affidavit of Pamela D. Zilly in Support of Debtors' Objection to Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19325)
13. Affidavit/Declaration of Service of Affidavit of Charles O. Freedgood (D.I. 19329)

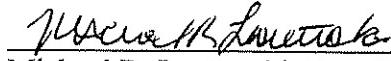
14. Order Regarding Debtors' Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999, and Rescheduling Hearing from September 15, 2008 to September 29, 2008, immediately following conclusion of the omnibus (D.I. 19417)
15. Brief in Support of Objection to the Unsecured Claims Asserted Under the Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19476)
16. Joinder of the Creditors Committee in Pre-Trial Memorandum of the Bank Lender Group in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19477)
17. Bank Debt Holders Pre-Trial Memorandum in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19478)
18. Bank Debt Holders Compendium of Exhibits and Exhibits 1 through 23 to Pre-Trial Memorandum in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I.'s 19479, 19480, 19481, 19482, 19483, 19484, 19487)
19. JPMorgan Chase Bank N.A.'s Joinder in Pre-Trial Memorandum in Opposition to Debtors' Objection to Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19485)
20. Sur-Reply to Debtors' Trial Brief in Support of Objection (D.I. 19538)
21. Debtors' Motion to Strike the Bank Lender Group's Sur-Reply or, in the Alternative, Motion for Leave to File a Sur-Reply in Support of Debtors' Objection to Unsecured Claims Asserted Under the Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19574)
22. Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code of W. R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, and The Official Committee of Equity Security Holders Dated as of 9/19/08 (D.I. 19579)
23. Exhibit Book (D.I. 19580)
24. Debtors' Disclosure Statement for the Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of W.R. Grace & Co., et al., The Official Committee of Asbestos Personal Injury Claimants, The Asbestos PI Future Claimants' Representative, and The Official Committee of Equity Security Holders Dated as of September 19, 2008 (D.I. 19581)
25. Order Granting Bank Lender Group's Motion for Leave to File Sur-Reply to Debtors' Trial Brief in Support of Objection (D.I. 19601)

26. Order (MODIFIED) Granting Debtors' Motion for Leave to File Sur-Reply in Support of Debtors' Objection to Unsecured Claims Asserted Under the Credit Agreements Dated as of May 14, 1998, and May 5, 1999 (D.I. 19602)
27. Sur-Reply in Support of Debtors' Objection to Unsecured Claims Asserted Under the Credit Agreements Dated as of May 14, 1998 and May 5, 1999 (D.I. 19609)
28. Motion to Approve Disclosure Statement, Solicitation and Confirmation Procedures, Confirmation Schedule and Related Relief (D.I. 19620)
29. Reply [Corrected] Debtors' Motion to Strike the Bank Lender Group's Sur-Reply or, In The Alternative, Motion for Leave to File a Sur-Reply In Support of the Debtors' Objection to the Unsecured Claims Asserted Under the Credit Agreements Dated as of May 14, 2998 and May 5, 1999 (D.I. 19622)
30. Transcript of Hearing held on September 29, 2008 (D.I. 19874)
31. Notice of Amendment of Disclosure Statement Objection Chart, Blackline of Plan of Reorganization and Blackline of Disclosure Statement (D.I. 19988)
32. Notice of Filing of Revised and New Exhibits to Disclosure Statement Exhibit Book (D.I. 19989)
33. Notice of Filing of Amendments to Proposed Confirmation and Solicitation Procedures (D.I. 19990)
34. Order (Initial) (MODIFIED by Court) Case Management Order Related to the First Amended Joint Plan of Reorganization (D.I. 20204)
35. Second Amended Case Management Order Related to the First Amended Joint Plan of Reorganization (D.I. 20622)
36. Order Approving Third Amended Case Management Order Related to the First Amended Joint Plan of Reorganization (D.I. 21544)
37. Memorandum Opinion and Order with respect to Debtors' Objection to Unsecured Claims Asserted Under Debtors' Credit Agreements Dated as of May 14, 1998, and May 5, 1999 (D.I. 21747)

38. Notice of Appeal of the Creditors Committee from Order Dated May 19, 2009 (D.I. 21905)
39. Notice of Appeal of Bank Debt Holders from Order Dated May 19, 2009 (D.I. 21911)

Dated: June 8, 2009

RESPECTFULLY SUBMITTED,



Michael R. Lastowski, Esq. (DE I.D. No. 3892)
Richard W. Riley (DE I.D. No. 4052)
DUANE MORRIS LLP
1100 North Market Street, Suite 1200
Wilmington, DE 19801
Telephone: (302) 657-4900
Facsimile: (302) 657-4901
E-mail: mlastowski@duanemorris.com
rriley@duanemorris.com

William S. Katchen, Esquire (Admitted in NJ Only)
DUANE MORRIS LLP
One Riverfront Plaza
Newark, New Jersey 07102
Telephone: (973) 424-2000
Facsimile: (973) 424-2001
E-mail: wskatchen@duanemorris.com

and

Lewis Kruger, Esquire
Kenneth Pasquale
(Members of the Firm)
STROOCK & STROOCK & LAVAN LLP
180 Maiden Lane
New York, New York 10038-4982
Telephone: (212) 806-5400
Facsimile: (212) 806-6006
E-mail: lkruger@Stroock.com

*Co-Counsel for the Official Committee of
Unsecured Creditors of W. R. Grace & Co., et al.*